IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 06.7.2020

CORAM

THE HONOURABLE MR. JUSTICE T.S.SIVAGNANAM

AND

THE HONOURABLE MRS. JUSTICE V.BHAVANI SUBBAROYAN

TAX CASE APPEAL No.967 of 2013

(heard through video conferencing)

The Commissioner of Income Tax,Coimbatore ...Appellant

Vs

M/s.ABT Limited, Coimbatore-18. ...Respondent

APPEAL under Section 260A of the Income Tax Act, 1961 against the order dated 04.7.2013 made in ITA.No.154/Mds/2013 on the file of the Income Tax Appellate Tribunal, Madras 'A' Bench for the assessment year 2004-05.

Against the order of the commissioner of Income Tax Appeals I, Coimbatore dated 02.11.2012 Appeal not appearing in person or by an Advocate.398/11-12 for the Assessment year 2004-05.

Against the order of the Assistant Commissioner of Income Tax Company Circle 1(1) Coimbatore dated 30.12.2011 PAN No/GIR.NO.AABCA8398K for the Assessment year 2004-05.

Against the order of the Assistant Commissioner of Income Tax dated 31.12.2009 in PAN/GIR No.AABCA8398K for the assessment year 2004-05.

For Appellant : Mr.T.R.Senthikumar, SSC & Ms.K.G.Usharani, JSC

For Respondent : Mr.A.S.Sriraman

Judgment was delivered by T.S.SIVAGNANAM,J

We have heard Mr.T.R.Senthilkumar, learned Senior Standing Counsel and Ms.K.G.Usharani, learned Junior Standing Counsel appearing for the appellant - Revenue and Mr.A.S.Sriraman, learned counsel appearing for the respondent - assessee. With consent of the learned counsel on either side, the appeal itself is taken up for final disposal.

2. The appeal has been admitted on 02.4.2014 on the following substantial questions of law :

> "1. Whether, under the facts and circumstances of the case, the Income Tax Appellate Tribunal was right in setting aside the assessment made under Section 147 holding that the same was initiated on account of change of opinion ? And
>
> 2. Whether, under the facts and circumstances of the case, the Income Tax Appellate Tribunal was right in holding that there was no failure on the part of the assessee to disclose truly and fully the details and particulars necessary for completing earlier assessment made under Section 143(3) read with Section 147 of the Income Tax Act?"

3. The assessment for the year 2004-05 was completed by the Assessing Officer under Sections 143(3) and 147 of the Income Tax Act, 1961 (for short, the Act) by order dated 31.12.2009. Subsequently, the assessment was reopened by the Assessing Officer under Sections 143(3) and 147 of the Act, which culminated in the order of assessment dated 30.12.2011. Aggrieved by the same and more particularly the expenses incurred on the cost of construction of building on the lease hold building/land, the appellant preferred an appeal before the Commissioner of Income Tax (Appeals)-I, Coimbatore [for brevity, the CIT (A)]. Ultimately, the CIT(A), by order dated 02.11.2012, allowed the appeal filed by the assessee.

4. As against the order passed by the CIT(A), the Revenue preferred an appeal before the Income Tax Appellate Tribunal, Madras 'A' Bench (hereinafter called the Tribunal). The Tribunal, after considering the factual

position, came to the conclusion that the reopening was a change of opinion and dismissed the appeal filed by the Revenue by order dated 04.7.2013. As against that, the Revenue is on appeal before us.

5. After elaborately hearing the learned Senior Standing Counsel for the appellant – Revenue and the learned counsel for the respondent – assessee, we are of the considered view that the reasons assigned by the Tribunal for dismissing the appeal filed by the Revenue are perfectly justified. The Tribunal took note of the fact that the respondent - assessee filed computation statement along with the original assessment, which showed the expenditure on construction of building on lease hold land/building and this was specifically mentioned and claimed as a revenue expenditure. The assessment was completed after examining the computation statement and break-up details furnished by the assessee. After taking into consideration these facts and the fact that the assessment was reopened beyond a period of four years and also after considering the Proviso to Section 147 of the Act, the Tribunal held that the reopening was one of change of opinion. The First Appellate Authority and the Tribunal, on facts, found that the respondent – assessee made a full disclosure of the expenditure and claimed the same as a revenue expenditure. We hold that no substantial question of law arises for consideration in this appeal.

6. Accordingly, the above tax case appeal fails and is dismissed. No costs.

Sd/-
Assistant Registrar(CCC)

//True Copy//
Sub Assistant Registrar

RS

To

1.The Income Tax Appellate Tribunal,
Madras ‘A’ Bench, Rajaji Bhavan,
Besant Nagar, Chennai-90.

2.The Commissioner of Income Tax Appeals I,
Coimbatore.

3.The Assistant Commissioner of Income Tax,
Company circle 1(1), Coimbatore.

4.The Assistant Commissioner of Income Tax,
Company Circle 1(2), Coimbatore

MG(CO)
CB(03/08/2020)